

REMARKS

THE PRESENT INVENTION AND PENDING CLAIMS

Claims 1-20 are currently pending. These claims, as amended, are now specifically directed to a teat that is configured to provide multiple functions which depend on the configuration of a plate and the vestibular screen and specific interactions between the teat and the tongue. Reconsideration of pending claims 1-20 is respectfully requested in view of the amendment to claim 1 and the following specific remarks.

SUMMARY OF THE OFFICE ACTION OF MARCH 4, 2003

Applicants acknowledge and appreciate that the action of March 4, 2003, was designated non-final. In that action, pending claims 1-20 were rejected on various bases.

First, claims 1-10 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 1,207,120 to Younker.

All other rejections were based on 35 U.S.C. § 103, and the Office Action indicates that claims 1, 2 and 5-9 were rejected as being obvious over the combination of U.S. patent 5,814,074 to Branam and EPO 0 383 314 (Orpaz).

Also rejected as obvious were claims 3, 4 and 11 in view of the combination of Branam and Orpaz, as applied to claim 1, and further in view of U.S. patent 4,986,851 to Bergesen.

Additionally, claims 10, 12, 15-19 were rejected as obvious over Branam in view of Orpaz, as applied above, and further in view of U.S. patent 1,207,120 to Younker.

Finally, claims 13, 14 and 20 were rejected as obvious over the combination of Branam and Orpaz in view of Bergesen, as applied to claims 3, 4 and 11 above, and further in view of Younker.

With respect to these rejections, the Office Action asserts that the teat of Younker includes "a nipple (10) that contacts the back of the tongue." Similarly, the Office Action asserts, with respect to Orpaz, that "the nipple can extend to the back portion of the tongue," and that it "would have been obvious to one of ordinary skill in the art at the time the invention was made to form the nipple of the Branam pacifier so that it extends to the back portion of the tongue."

AMENDMENTS TO THE CLAIMS

The amendments to the claims, which depend on the configuration and sizing of the elements of the claimed teat, are directed to a central aspect of the invention, *i.e.*, the interaction between the teat and the tongue, and highlight the differences between the applicant's invention and the identified and applied prior art.

Specifically with respect to the rejections of the Office Action:

With respect to claims 1 and 10 and the rejection under 35 U.S.C. § 102(b), and contrary to what is asserted in the Office Action, applicant respectfully submits that Younkers does not

disclose a teat with a nipple that contacts the back of the tongue. This feature, a nipple sized to be in registration with the back portion of the tongue, is explicitly recited in amended claim 1, and therefore in claim 10 which depends from claim 1, and provides exemplary benefits, as disclosed in the specification at pages 10 and 11. This feature allows for the stimulation of the child's stomatognathic system.

Significantly, Younker does not disclose or suggest these desirable features of the applicant's invention, and applicant submits that these features, as provided by the structure of applicant's teat, cannot be provided by Younker inasmuch as Younker does not disclose a teat with a nipple that contacts the back of the tongue.

First, it is noted that Younker is not concerned with stimulation of the child's stomatognathic system in view of the statement of Younker's purpose of providing a device which causes the mouth of an infant to be developed into an "attractive shapeliness." (See Younker, page 2, column 1, lines 6-27). Indeed, Younker distinguishes his invention from the prior art on this basis, contending that "the use of the ordinary forms of nipples and comforters" produce "abnormal formations of the mouth and the lip." (Younker, page 2, column 1, lines 24-27).

Moreover, and more significantly, nowhere in Younker is there any mention of a nipple cooperating with the back of a child's tongue, inasmuch as Younker's description does not mention the child's tongue, and certainly does not disclose a relationship between the child's tongue any element of his device. Instead, Younker's description merely states that the device is "adapted to be disposed in the mouth of an infant." (Younker, page 1, column 2, lines 69-70).

With respect to the rejections under 35 U.S.C. § 103 based on Branam and Orpaz, the Office Action contends that Branam teaches substantially all the features of claim 1, except that Branam fails to form the nipple so that it extends to the back portion of the tongue, and further that Orpaz teaches this feature, thus making claim 1 obvious. For the motivation to make this combination, the Office Action asserts that the nipple of the Branam pacifier could be extended to the back portion of the tongue, as this is another way to form a pacifier that has both a nipple and a biting plate.

Applicant respectfully submits that the combination of Branam and Orpaz is not suggested in the art. Branam provides an oral appliance with an inner shield 54 and a bite ridge 56 for positioning a child's gums, and Branam notes that the gums are not to move relative to these elements, and relative to the appliance as a whole. Moreover, Orpaz teaches a wholly different type of device from Branam. The device of Orpaz is a gum massager, with the horse shoe portion moving back and forth to massage the gums. Applicant asserts that there is no motivation in Branam or Orpaz for combining a device for positioning a child's gums with a separate device for massaging gums.

*back of tongue
↑ is bad argument,
depends on s. 20
of baby
and how
tongue is
positioned
in mouth*

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Application No. 09/937,906

Moreover, and significantly, Orpaz does not disclose a nipple extending to the back portion of a tongue. Orpaz merely shows, in Figures 3A-3C and 4, what might be interpreted as a nipple, with no indication of the relative position of the tongue.

Finally, Branam plainly teaches away from forming a long nipple and/or forming a nipple that would interfere with the tongue and/or the palate. In Branam, column 1, lines 30-32, prior art associated with a "long" nipple is criticized. Likewise, in column 2, lines 14-15, Branam expressly states that the problems it seeks to solve are linked, at least in Branam's view, to "the fact that the nipple portions of the conventional pacifiers extend too far in the mouth." Finally, at column 5, lines 29-43, the "nipple element" of Branam is described as being short, to avoid interfering with the tongue (line 33).

we're right → Thus Branam plainly teaches away from the solution of the present invention, which calls for a nipple to contact the back of the tongue. Because Branam plainly teaches away from the invention, the obviousness rejections based on Branam are without basis and should be withdrawn. This includes not only those directed to claims 1, 2 and 5-9, but also those directed to claims 3, 4 and 11, claims 10, 12, 15-19, and claims 13, 14 and 20, which are all dependent, in the first instance, on the combination of Branam and Orpaz.

CONCLUSION

The application as amended is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, further issues remain upon consideration of this response to the Office Action of March 4, 2003, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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